


**INDIANACOURTS**

*International Prosecution of War Crimes,  
Genocide, & Crimes Against Humanity*  
*Presented at*

Indiana Supreme Court  
Legal History Lecture Series  
(supported by Indiana Commission for  
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(Wednesday, 7 May 2008, 3:00 – 4:30)

**Presented alongside Judge Nancy Vaidik**  
**With special thanks to Elizabeth R. Osborn, PhD Assistant to the  
Chief Justice for Court History and Public Education**

### Outline for Presentation

1. Quest for Permanent International Criminal Tribunal—Impunity, Victors' Justice, & Never Again.
  - a. 1872 – 1<sup>st</sup> Franco-Prussian War
  - b. 1919—Treaty of Versailles (German Ex Emperor William II & Dutch Queen)
  - c. League of Nations; WW II; Nuremberg & Tokyo Trials
  - d. United Nations, Genocide Convention, International Human Rights Law, Geneva Conventions (ICRC)
2. Impunity
  - a. Facilitated by state sovereignty. Can't interfere!
  - b. Heads of state & others – No international scrutiny of domestic acts
  - c. Domestic courts controlled by perpetrators.
  - d. Impunity if remain in power. Untouchable. Political.
  - e. Reconciliation. Non-Accountability.
3. Victors' Justice?
  - a. You can prosecute us because you won the war!
  - b. Selective justice – prosecute based on politics (ICTY/ICTR – based on political will)
  - c. You committed some of same acts (tu quoque)
  - d. Argued by WW II & modern defendants.
4. Failed attempts to codify Nuremberg
  - a. International Law Commission & predecessor
  - b. Draft code of offences against peace & security of mankind;
  - c. UN Special Rapporteur
  - d. Reports & Draft Statutes (1950s onward)
  - e. National Prosecutions.
5. Deviation from our permanent court quest --- Let's look at the law!
  - a. **Public International Law (See Chart)**
    - i. International Criminal Law; International Human Rights Law; International Humanitarian Law
  - b. **Conflict Spectrum (See Chart)**
    - i. Which law applies when?
    - ii. How has this changed in the US since 9-11?
  - c. **Let's use "torture" as our example**
    - i. International Human Rights Law prohibits torture (multiple treaties, customary norms)
    - ii. International Humanitarian Law (Law of War) prohibits torture (e.g., Geneva Conventions)
    - iii. International Criminal Law (Ad hoc & Permanent International Criminal Tribunals prohibit torture) (see ICTY, ICTR, ICC & other statutes)

6. **Another Deviation – How IU-Indianapolis Law Students & Faculty involved in IHRL, IHL & ICL?**
  - a. Guantanamo Bay defense (David Hicks - Australian, Omar Khadr – 15 year old Canadian); Slobodan Milosevic Defense (ICTY); UN Advocacy in Geneva & New York; Internships at the ICTY (The Hague), ICTR (Arusha), etc.
  - b. Join the IU- Indianapolis Master of Laws (LL.M.) International Human Rights Law Track!
7. **Introduction to Ad Hoc Tribunals**
  - a. **International Criminal Tribunal for former Yugoslavia (ICTY, 1993)**
    - i. Genocide, crimes against humanity, war crimes
    - ii. Committed in Former Yugoslavia – post '91
    - iii. The Hague (Court seat). Share ICTR Appeals Chamber (The Hague)
  - b. **Rwanda (1995)**
    - i. Genocide, crimes against humanity, war crimes
    - ii. Committed in Rwanda -- 1994
    - iii. 1st genocide conviction (Akayesu, '98)
    - iv. Arusha, Tanzania (Court seat). Share ICTY Appeals Chamber (The Hague)
  - c. **Sierra Leone (2002)**
    - i. War crimes & crimes against humanity
    - ii. Crimes after 30 November 1996
    - iii. 11 Judges – inc 4 from Sierra Leone
  - d. **Cambodia (Cambodia & UN agree - October 2004)**
    - i. Hybrid Court
    - ii. Genocide, Crimes Against Humanity, Grave breaches of Geneva Conventions
    - iii. Crimes between 17 April '75 - 6 Jan '79 (Pol Pot & Khmer Rouge era)
  - e. **East Timor -- UN created -- May 2000**
    - i. Crimes against humanity; war crimes; sexual offences; torture
    - ii. Committed between 1 Jan & 25 Oct '99
    - iii. Foreign & East Timorese Judges
8. **Criticisms of Ad Hoc Tribunals**
  - a. Limited Jurisdiction – Limited by situations, territory & tim
  - b. Retroactive & responsive (weakens deterrence)
  - c. Practical but inefficient
  - d. Expensive
  - e. Political will of Security Council
9. **Other Reasons for a Permanent ICC**
  - a. Deterrence (General & Specific (More realistic than Nuremberg) (Safety/Security?))
  - b. Punishment
  - c. Redress & catharsis for Victims
  - d. Promote Peace – "No peace w/o Justice" ("Justice" means prosecution)
  - e. Justice for victims (individual and societal)
  - f. Justice for perpetrator (get what he deserves – "just punishment").
  - g. Record history – Find the Truth
  - h. Accountability
  - i. Rehabilitation?
  - j. Stop harm to international community?
  - k. Strengthen individual (and societal?) rectitude
  - l. Educate future & present generations—Build a record
10. **Lead up to Rome Conference on ICC**
  - a. PrepComms
  - b. Rome Conference – Negotiating the Rome Statute
  - c. Coming into Force (1 July 2002)
  - d. Genocide, Crimes Against Humanity, War Crimes, Aggression
11. **Post-ICC Alternatives to the ICC**
  - a. Iraq & Lebanon
12. **Prospects for the future**

- a. Will the ICC succeed?
- b. Darfur – “Never Say Never Again” (Or “Never Again Say Never Again”)
- c. Iraq (Impunity? Victors’ Justice? Never Again?)
- d. Abu Ghraib (Impunity? Victors’ Justice? Never Again?)
- e. Waterboarding. (Impunity? Victors’ Justice? Never Again?)
- f. Kuwait. (Saddam executed before tried for invading Kuwait in 1990. Impunity?)

**13. International Crimes**

**14. Criminal Law & Procedure before International Tribunals**

**15. Questions & Answers?**

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